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*Attorneys for Plaintiff,*  
*SUSTAINABLE MODULAR MANAGEMENT, INC.*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, for the	)	
use and benefit of SUSTAINABLE	)	
MODULAR MANAGEMENT, INC., a	)	Case No. 2:20-cv-00790-GMN-NJK
Texas corporation	)	
<i>Plaintiff,</i>	)	
v.	)	JOINT STIPULATION AND
	)	ORDER TO AMEND DISCOVERY
JE DUNN CONSTRUCTION COMPANY;	)	PLAN AND SCHEDULING ORDER
FEDERAL INSURANCE COMPANY;	)	
HARTFORD FIRE INSURANCE	)	(FIFTH REQUEST)
COMPANY; TRAVELERS CASUALTY	)	
AND SURETY COMPANY OF	)	
AMERICA; DOE Individuals I-X and ROE	)	
Entities I-X, inclusive,	)	
<i>Defendants.</i>	)	
	)	

1 This Stipulation to Amend Discovery Plan and Scheduling Order only seeks  
2 to extend by five calendar days until October 12, 2022 the current deadline of  
3 October 7, 2022 for designating experts and exchanging expert reports consistent  
4 with Rule 26, Federal Rules of Civil Procedure, and extending by 23 days until  
5 November 30, 2022 the current deadline for designating rebuttal experts and  
6 exchanging reports consistent with Rule 26. This stipulation is made by and  
7 between all parties to this consolidated action (United States of America, for the  
8 use and benefit of Sustainable Modular Management, Inc. ("SMM"); JE Dunn  
9 Construction Company ("JE Dunn"); Hartford Fire Insurance Company  
10 ("Hartford"); Travelers Casualty and Surety Company of America ("Travelers");  
11 Federal Insurance Company ("Federal"); and Pacific Indemnity Company  
12 ("Pacific")) through their respective counsel (collectively, the "Parties."). This is  
13 the fifth stipulation for amendment of the discovery plan and scheduling order.  
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19 Before addressing the requirements of LR 26-3, the following background  
20 information may provide the Court with context to aid it in evaluating the need for  
21 this amendment:  
22

23 1. As stated in the prior stipulations, this case arises out of a  
24 multimillion-dollar construction project concerning the hospital located on  
25 Nellis Air Force Base, Nevada ("the Project"). The Parties are the general  
26 contractor (JE Dunn), JE Dunn's subcontractor (SMM), two of SMM's  
27  
28

1 subcontractors (Bombard and Sherwin Williams), and JE Dunn's sureties.<sup>1</sup>  
2 The Project commenced in mid-2019 but is now complete or nearly  
3 complete.  
4

5 2. To date, the Parties have been cooperating with each other and have  
6 engaged in extensive discovery and disclosure, with voluminous productions  
7 by both JE Dunn and SMM. For example, JE Dunn has produced several  
8 hundred thousand pages of documents and SMM also has produced a  
9 substantial number of documents. Since the last stipulation was filed on June  
10 22, 2022, the Parties have taken four more depositions that now total 17  
11 depositions that have been taken in the case to date.  
12  
13

14 3. The Parties are requesting this short extension because four  
15 depositions were taken in the last 45 days, and the experts and counsel need  
16 additional time to evaluate those materials before finalizing the expert  
17 reports. Additionally, the Parties are scheduled to mediate this dispute on  
18 October 17, 2022 with Richard Flake. Because of the time spent to prepare  
19 for and participate in the mediation, and to allow for the possibility of  
20 success at the mediation, the Parties request some additional time to  
21 complete their rebuttal expert designations and reports.  
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<sup>1</sup> Bombard and Sherwin Williams settled with JE Dunn, assigned claims to JE Dunn, and have been dismissed, with JE Dunn substituted in their place.

1 Accordingly, based on the forgoing, the Parties jointly move the Court to extend  
2 the dates for designating experts and providing reports, and for designating rebuttal  
3 experts and providing reports.  
4

5 *Local Rule 26-3*

6 Pursuant to LR 26-3, the Parties state the following:

7  
8 (a) The following discovery has been completed:

- 9 1. The Parties submitted their initial disclosures;
- 10 2. SMM propounded Interrogatories and Requests for Production  
11 to JE Dunn, to which JE Dunn has responded;
- 12 3. SMM propounded Requests for Production to Travelers,  
13 Hartford, and Federal, to which all three have responded;
- 14 4. JE Dunn propounded Interrogatories and Requests for  
15 Production to SMM, to which SMM has responded;
- 16 5. Bombard propounded Requests for Admission, Requests for  
17 Production, and Interrogatories to JE Dunn and to SMM. However, with SMM's  
18 approval, JE Dunn has settled with Bombard and no longer requires responses to its  
19 discovery requests;
- 20 6. JE Dunn has issued third-party records subpoenas to Anslow  
21 Engineering & Consulting, LLC, Paul Anslow, Phoenix Modular, Inc., Norman  
22 Price, NP Consulting Services, Team Modul, LLC, TR Arnold & Associates, Inc.,  
23 and Jay Wood, to which all have responded;

1           7.     SMM has issued a third-party subpoena for records and  
2 deposition to Hoefer Welker, formerly known as Hoefer Wysocki, which provided  
3 professional design services for JE Dunn on the project. Hoefer Welker has  
4 responded to the subpoena and has been deposed.  
5

6           8.     SMM has issued a third-party subpoena for records to FP&C  
7 Consultants, to which FP&C has responded.  
8

9           9.     The Parties both represent that their respective productions of  
10 documents are substantially complete, with the exception of (1) JE Dunn's ongoing  
11 damages calculations (as the Project is ongoing), (2) discovery related to the  
12 demobilization and relocation of the temporary facilities, and (3) the Parties'  
13 ongoing obligation to produce any other document later-discovered and subject to  
14 production;  
15  
16

17           (b)    The following discovery remains to be completed:  
18

19           1.     The Parties will disclose experts, rebuttal experts and submit  
20 reports for any experts they expect to present at trial, and;  
21

22           2.     The Parties will take additional fact and expert depositions.  
23

24           (c)    The following describes why the remaining discovery cannot be  
25 completed under the current schedule:  
26

27           As discussed in detail above, because four depositions were completed in the  
28 last 45 days, the Parties request a short extension of the deadline to designate  
experts and provide their reports until October 12, 2022. Additionally, because of

the upcoming mediation on October 17, 2022, which will require preparation and the attention of the parties after the initial expert designations are made and reports provided, and to allow for possible success at mediation, the Parties request a further short extension until November 30, 2022 to designate rebuttal experts and provide their respective reports. No further extensions are being requested with this stipulation.

(d) A proposed schedule for completing all remaining discovery is as follows:

	Old Deadline	New Deadline
Deadline to Amend Pleadings and Add Parties	July 31, 2021	No change
Parties to designate experts and exchange reports consistent with Rule 26	October 7, 2022	October 12, 2022
Parties to designate rebuttal experts and exchange reports consistent with Rule 26	November 7, 2022	November 30, 2022
Discovery Period Closes	January 17, 2023	No change
Dispositive Motion Submittal Deadline	March 14, 2023	No change
Parties shall submit a pretrial order (to include the disclosures required by Fed. R. Civ. P. 26(a)(3))	April 18, 2023	No change

STIPULATION

NOW, THEREFORE, the Parties hereby stipulate and agree to amend the  
Discovery Plan and Scheduling Order as described herein.

IT IS SO STIPULATED.

DATED this 6<sup>th</sup> day of October, 2022.

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*Attorneys for Defendant JE Dunn  
Construction Company*

ORDER

IT IS SO ORDERED.

  
\_\_\_\_\_  
United States Magistrate Judge

Dated October 11, 2022